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Regulatory
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Proposed Regulation Agency Background Document

Agency name	Department of Social Services
Virginia Administrative Code (VAC) citation	22 VAC40-293
Regulation title	Locality groupings
Action title	Establish regulation
Document preparation date	July 29, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apr.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the Virginia Register Form, Style and Procedure Manual (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This regulation establishes criteria for local departments of social services to change Temporary Assistance for Needy Families (TANF) locality groupings. Each local area is placed in a locality grouping which determines payment levels for recipients of TANF in that locality. This regulation indicates the required data and the criteria to determine if a locality may switch to another locality grouping and change TANF payment levels.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Pursuant to §63.2-217 of the Code of Virginia the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. The 2002 Appropriations Act, Item 353, specifies that regulations must be established for changing locality groupings.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The current standards of need were established in 1974. There was not a mechanism for localities to change locality groupings, even though the locality groupings were based on differences in locality cost-of-living. Over time, significant changes have occurred in the development of local economies. This regulation is necessary to allow local departments of social services to change locality groupings when there is evidence to support that need. This regulation will protect families by allowing them access to greater resources when warranted.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

This regulation establishes a procedure for local departments of social services to change locality groupings. Local departments of social services must petition the state board of social services, provide Department of Housing and Urban Development fair market rent data, and evidence that the request has been shared with the local governing board. If the request is to move to a locality grouping in which payments are lower, the local department must provide evidence that the locality has a disproportionate share of TANF recipients.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

This regulation is advantageous to the Commonwealth, local departments of social services, and recipients of TANF. Currently, there is no procedure for changing locality groupings even though there may have been significant changes in the cost-of-living in a given locality. The result is an inequitable payment structure for TANF that cannot be rectified. This regulation establishes criteria using data that is easily obtainable and readily available. This will result in a system that is more equitable to families across the Commonwealth.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There is no projected cost for this regulation. The regulation requires that the Commissioner of the Department of Social Services must certify that funds are available prior to permitting a locality to change locality groupings. If a change is made, the increase will be funded with federal TANF block grant funds.
Projected cost of the regulation on localities	No costs will be borne by localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation	This regulation will effect recipients of TANF.
Agency's best estimate of the number of such entities that will be affected	There is no indication whether any localities will change locality groupings.
Projected cost of the regulation for affected individuals, businesses, or other entities	There is no cost to individuals, businesses, or other entities.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Other methods of determining locality groupings were examined. A regional, rather than locality-based method was examined, but was rejected due to the wide fluctuations it produced and the high cost. Similar results were found when criteria for changing all localities was considered in mass. Another issue was that many localities would be switched to a lower locality grouping, and therefore would automatically reduce already low TANF payments to needy citizens. The petition method of switching locality groupings on an individual locality basis was chosen as the best method to remove glaring inequities without causing great fiscal strain.

Public comment

Please summarize all public comment received during 30-day period following the publication of the NOIRA, and provide the agency response.

No comments were received.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulation will assist families on TANF because it provides for more equitable payment levels. In many situations, this could mean higher payments and greater resources for families in need.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The changes from the emergency regulation to this proposed action are:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
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22VAC40-293-20		The local department of social services shall provide documentation that the local governing body has reviewed the proposal to change locality groupings.	Rationale for this requirement was inserted in the regulation to make the regulation more precise.
22VAC40-293-20		The Department of Social Services must prepare a fiscal impact statement.	A time frame was established. The fiscal impact statement must be prepared prior to the following state board meeting.
22VAC40-293-20		The State Board of Social Services will approve the request if it will achieve a higher degree of equity.	Criteria for evaluating the fair market rent data was added so that the determination of achieving equity was not subjective.
22VAC40-293-20		When petitioning to change to a lower locality grouping, the locality must provide data that there is a disproportionate share of TANF recipients in the locality.	Criteria for establishing whether there is a disproportionate share of TANF recipients was added so that the determination was not subjective.



Economic Impact Analysis Virginia Department of Planning and Budget

22 VAC 40-293 – Locality Groupings
Department of Social Services
October 10, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The Virginia Board of Social Services (board) proposes to establish criteria that localities must meet to change their Temporary Assistance for Needy Families (TANF) locality grouping.

Estimated Economic Impact

This proposed regulation establishes criteria for local departments of social services to change TANF locality groupings. In 1974 each Virginia locality was assigned a specific locality grouping, which determines payment levels for recipients of TANF in that locality. No mechanism was established to permit localities to change their locality grouping. Since differences in cost-of-living for localities have changed since 1974, it may be appropriate to alter the composition of locality groupings. Pursuant to Item 353.F of the 2002 Appropriation Act, the board proposes to establish criteria which localities must meet in order to have their request for a change in locality grouping be approved.

Some localities may wish to be reclassified into a higher TANF payment grouping in order to benefit its poorer citizens. Since TANF payments are fully funded by the federal and state governments, localities will encounter no additional direct funding cost for higher TANF payments to their residents. On the other hand, higher TANF payments may encourage some poorer individuals to move into the locality. Though localities do not contribute to TANF payments, local departments of social services do administer the payments. Thus, a greater number of TANF recipients will increase a locality's administrative costs. Also, the constituents of some localities may prefer not to encourage TANF recipients to move in. Due to the potential increase in administrative costs and desires to not encourage lower-income individuals to move in, the demand for reclassification into a higher grouping may be limited. The Department of Social Services (department) has reported that there has been little interest in grouping reclassification. Due to administrative cost concerns and perhaps a desire to not be a financial magnet for lower-income citizens, some localities may wish to be reclassified into a lower TANF payment grouping.

The board proposes that a request by a locality for a change in its locality grouping be approved if it meets specified conditions. For localities seeking to be reclassified into a locality grouping with lower TANF payment levels, one of the specified conditions is that "the data demonstrates that there is a disproportionate number of TANF recipients in the locality when compared to adjacent localities." A locality is deemed to have a disproportionate number of TANF recipients "if the proportion of TANF recipients to the general population is at least 20% higher in the petitioning locality than in the adjacent localities." Since TANF recipients make up only about 1% of Virginia's population, requiring that the percentage of a locality's population that are TANF recipients be at least 20% higher than the percentage of neighboring localities' populations that are TANF recipients is a prohibitively high criterion to meet. Thus, localities will very rarely, if ever, be permitted to move to a locality grouping with lower TANF payment levels if this proposed language is included in the regulation.

For localities seeking to be reclassified into a locality grouping with higher TANF payment levels, the board proposes to require that the fair market rent costs¹ in the petitioning locality be either 20% higher than at least one bordering locality in its locality grouping, or that fair market rent costs are the same for at least one bordering locality that is in a higher locality grouping. The

¹ The proposed regulation specifies that the most recent fair market rent data issued by the U.S. Department of Housing and Urban Development be used.

proposed language does not specify whether “the same” requires exactly equal dollar figures, or if very close but not exactly equal fair market rent figures would be considered “the same.” The proposed language also seems to exclude from qualifying petitioning localities that have fair market rent costs higher than at least one bordering locality that is in a higher locality grouping, even though the logical argument for their qualifying is stronger than localities that have fair market rent costs that are the same as at least one bordering locality that is in a higher locality grouping.

The department is not aware of any locality that currently wishes to reclassify its grouping. Thus, in the near term, this proposed regulation will likely have no impact. Since the proposed criteria for switching to a grouping with lower TANF payment levels are highly prohibitive, it is unlikely that localities will reclassify downward in the near or long term. Since the proposed criteria for switching to a grouping with higher TANF payment levels can be feasibly met, some localities may reclassify upward in the long term. Lower-income residents of such localities would benefit by receiving larger TANF payments. By seeking reclassification, the localities would be indicating that the benefits of the higher payments outweigh the potentially higher administrative costs.

Rather than base approval of changes in TANF payments on differences between neighboring localities, perhaps it would be more appropriate to consider just the cost of living within localities. A straightforward methodology that classifies each locality based on its cost of living, for which an appropriate proxy might be the U.S. Department of Housing and Urban Development fair market data, could be used. Localities could be placed in one of three (or more) cost-of-living tiers, depending on where it ranks compared to other localities in the state. The TANF payment levels would be the same in each tier, as they are now within each grouping. A larger number of tiers would better tie the level of TANF payments to the local cost of living. For example, if there are only two tiers, then there will be a wide range of cost-of-living levels within each tier. If there are many tiers, then the same payment levels will only be given to localities that have similar costs of living.

Initially, these new cost-of-living tiers could be applied only to evaluate a payment tier change request from a locality. However, applying this methodology on a periodic basis to all the localities in the state and making appropriate payment adjustment within existing budget constraints may also be appropriate. This would help ensure that TANF payments are distributed in the most equitable manner possible.

Businesses and Entities Affected

This proposed regulation potentially affects the 76,416 TANF recipients in Virginia, as well as all Virginia localities.²

Localities Particularly Affected

All localities in Virginia are potentially affected by the proposed amendment.

Projected Impact on Employment

The proposed amendments will not significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendments will not significantly affect the use and value of private property.

² Source: Department of Social Services

Department of Social Services
State Board of Social Services

22 VAC 40-293-10 et seq., *Locality Groupings*

The Department of Social Services concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget.